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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,347	06/25/2004	Minoru Hoshino	09450/0201430-US0	2617
33766	7590	10/12/2007		
CHERYL F. COHEN, LLC 2409 CHURCH ROAD CHERRY HILL, NJ 08002			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 10/12/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

Application No.

10/500,347

Applicant(s)

HOSHINO ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

MJH

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed September 10, 2007 have been fully considered but they are not persuasive.

With respect to applicant's argument regarding the rejection of claims 1 and 2: Applicant argues that Nakazawa does not teach that the third and fourth elastic members 20,21 extend in a longitudinal direction beyond the points of intersection. As an initial matter, in response to applicant's arguments against the Nakazawa reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant did not specify which intersection points are of interest in the argument. The Office assumes that the points of interest are the points of intersection with the first and second elastic members 18,19 as recited in claim 1. As such, Nakazawa teaches in Figs. 2 and 4 a portion of third elastic members 20,21 that extend in a longitudinal direction beyond the points of intersection as is required in claim 1. Thus Nakazawa in view of Palumbo renders claims 1 and 2 unpatentable.

With respect to applicant's arguments regarding dependent claims 3 and 8, applicant asserts that the Office did not address the argument presented in the Remarks filed September 10, 2007 in the final Office action mailed July 12, 2007 when the same arguments were presented in the Remarks filed April 27, 2007. The office action clearly states that applicant's arguments were moot in view of the new grounds of rejection prompted by applicant's amendment to claim 1 to include liquid-permeable flaps. The Office does not respond when the arguments are rendered moot. Applicant argues with respect to claims 3 and 8 that Nakazawa does not teach that the third leg part elastic bodies have at least a portion thereof disposed along the central axis outward beyond the leg parts at the respective sides of the outer layer sheet. Since the X-X axis in question is found nowhere in any of applicant's drawings, it has been interpreted throughout prosecution by the Office that this axis is perpendicular to the longitudinal direction of the claimed article. Thus it is also unclear where "along the X-X axis" is. The third leg elastic members 20,21 have at least a portion that is disposed on the central lateral axis. It is interpreted herein that "along" also means at a point on a line such as the claimed central lateral axis. Supporting dictionary entries have been attached hereto to show this common interpretation of "along". Further, applicant argues that there is no portion of third and fourth elastic members 20,21 that are disposed outward beyond the leg parts 13L,13R. As this term and orientation of the third elastic bodies is described in the disclosure, the third elastic members, by having portions located in the flap parts that extend beyond the respective sides of the claimed outer sheet, necessarily meet the claim limitation of portions of third elastic bodies that extend outwardly beyond leg parts at the respective side edges of the claimed leg parts. Since Nawazaka also teaches this feature as seen in Figs. 2 and 4, Nawazaka meets this claim limitation.

Applicants' arguments with regard to dependent claims 4,5,7,9,10,12 have been fully considered but are not persuasive as Applicants' arguments depend entirely on Applicants' arguments regarding the rejection of claims 1 and 2, which have been addressed supra.

With respect to applicant's arguments regarding claims 6 and 11: Applicant argues that Nawazaka does not anticipate claims 6 and 11 because Nawazaka does not teach that each of the first leg part elastic bodies and second leg part elastic bodies are arranged to be lower in tensile strength at the intermediate part at the direction of crossing the crotch part than at the ends. Applicant is again reminded that this is not a rejection under 35 U.S.C. 102 and no argument of anticipation was ever made by the Office in reference to claims 6 and 11. Applicant argues the Office's argument that the intermediate part of the leg elastic bodies 18,19 is necessarily lower because it is in this intermediate part in the crotch region where the first and second elastics 18,19 intersect the third elastics 20,21, rather than arguing whether Nawazaka meets the claim limitations. Since Nawazaka teaches an identical elastic member configuration to the claimed invention, the limitation of lower tensile strength in the intermediate parts of the first and second elastic members flows inherently and necessarily from the teachings of Nawazaka. Though, again, the rejection of claims 6 and 11 is not under 35 U.S.C. 102, it is because of this inherent and necessary limitation that Nawazaka in view of Palumbo teaches all of the limitations of claims 6 and 11.

With respect to applicant's arguments regarding the rejection of claims 15 and 16: Applicant argues that the third and fourth elastic members 20,21 do not even closely extend the full length in the longitudinal direction of the claimed article. This is not found persuasive because applicant has not quantified "substantially the length". Also, applicant is basing arguments presented solely on the figures taught by Nawazaka, which is speculative and insufficient to overcome the rejection. Applicant further argues that the third and fourth elastic are half the length of the instant article. It appears applicant derived this conclusion from measuring the relevant drawings of Nawazaka, which again is purely speculative as drawings are not to be assumed to be drawn to scale. Thus, this argument is also insufficient to overcome the rejection of claims 15 and 16.